

## Jersey's approach to asset freezing – cross border cooperation

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One of the ways in which the Courts of Jersey maintain the reputation and integrity of the island as an international finance centre is by granting freezing injunctions, in appropriate circumstances, to provide support to overseas courts.

In the leading case of *Solvalub Ltd v Match Investment Ltd* [1996] JLR 361, the Jersey Court of Appeal aptly explained the policy behind Jersey's approach to freezing injunctions in the following way :

*'...the availability of the relief is desirable in the interests of comity with the courts of other countries and in the interests of Jersey's reputation as a financial centre.'* per Le Quesne, J.A at (page 369, line 22 – page 370, line 45).

*Solvalub* is now some 30 years old. However, this sentiment holds true today.

International comity underpins the approach of the Jersey Courts. That comity is complemented by a restraint which ensures that limits are placed on both the Jersey Courts' own ability to assume jurisdiction over a non-Jersey resident defendant; and a foreign court's ability to assert jurisdiction over Jersey assets.

### Common Jersey asset freezing scenarios

There are three scenarios that commonly arise for parties in relation to asset freezing, in Jersey:

1. Will the Jersey Courts grant a freezing injunction in aid of a set of foreign proceedings?
2. Will the Jersey Courts assume jurisdiction over a particular defendant?
3. How will the Jersey Courts deal with a worldwide freezing order granted by a foreign court?

This article addresses these scenarios, before considering the use of disclosure obtained in Jersey in support of foreign proceedings, and finally the unique handling of a Jersey trust structure.

### Will the Jersey courts grant a freezing injunction in aid of a set of foreign proceedings?

The Jersey Courts have the power to grant freezing orders in aid of foreign proceedings, including where no other relief is sought in Jersey (*Solvalub Ltd v Match Investment Ltd* [1996] JLR 361).

Freezing orders are granted at the pre-trial stage, and also post-judgment, in aid of enforcement. Ancillary disclosure orders invariably accompany the order; with post judgment disclosure being more freely given, the defendant already having been

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found liable on the merits, in the foreign court or arbitration.

## Will the Jersey courts assume jurisdiction over a particular defendant?

### Jurisdiction: Jersey resident defendants

A Jersey Court will make a worldwide disclosure and/ or freezing order over a Jersey company, or a Jersey resident defendant because it has in personam jurisdiction over that defendant (*Africa Edge S.a.r.l. v Incat Equipment Rental Limited and others* [2008] JRC 175).

### Jurisdiction: What about non-Jersey resident defendants?

Personal jurisdiction can extend to non-resident defendants who are properly before a Jersey Court.

This was the scenario in *Dalemont Limited v Senatorov* [2012] (1) JRC 014. In that case, the Court did consider that it had jurisdiction to make worldwide disclosure orders against a Russian individual and Cypriot company who had been joined as necessary and proper parties to proceedings which involved a Jersey Foundation, over which the Jersey Court had clear jurisdiction.

Bearing in mind that a Plaintiff must obtain the Court's permission to serve a pleading out of the jurisdiction, with reference to one of the 'service-out gateways' set out in Jersey's Service of Process Rules 2019, the Court will already be satisfied that there is an actual connection to Jersey for the relevant defendant to be brought before it in the context of a particular case.

So it is unsurprising that the Court considers it has jurisdiction to make a worldwide disclosure order against that non-resident defendant, again in the context of that case.

## Will the Jersey Court will exercise its discretion to make the order?

The question then arises as to whether the Court's discretion ought to be exercised, to order disclosure.

In *Dalemont*, as the Cypriot company was the alleged recipient of assets being claimed by the plaintiff, it was a proper party to the claim in Jersey. An application for leave to appeal the disclosure order failed.

It was highly relevant that *Dalemont* was a post-judgment case. In exercising its discretion to grant the disclosure, the Court highlighted that the use of the Island's financial services to hide assets so as to defeat a judgment creditor is, as a matter of policy, something to be strongly discouraged. It was therefore 'just' to grant the worldwide disclosure order.

## How will the Jersey courts deal with a worldwide freezing order granted by a foreign court?

Worldwide freezing orders granted by a foreign court, are not automatically recognised in Jersey. The Jersey Courts will consider the matter afresh.

The legal test for the grant of a freezing order is helpfully summarised in the case of *Cornish v Brelade Bay Limited* [2019] JRC 091 (RC) (Blf), and broadly mirrors the test applied in England and Wales.

The applicant must:

- establish a good arguable case on the merits of the underlying action;
- give full and frank disclosure;
- give particulars of their claim, and points against their claim;
- set out the grounds for believing that the defendant has assets in Jersey;
- explain why there is a real risk that those assets will be dissipated, unless the defendant is restrained by order of a Jersey Court; and
- give an undertaking in damages.

It is important for a party with the benefit of a foreign worldwide freezing order, to seek to obtain the order in Jersey. Banks and other financial institutions, trust companies and so on holding assets will generally ignore the foreign order, as they know it won't be directly enforceable in Jersey, without that mirror order from a Jersey court.

Whilst this may sound obvious, it is a point that can be overlooked by clients.

## Freezing order procedure in Jersey

An application for a freezing order is made by Order of Justice (being the pleading), and supporting Affidavit. There is a user-friendly Practice Direction (RC20/12) setting out procedural requirements and a standard form of Order. Any proposed changes to the standard form must be highlighted and explained.

The affidavit must evidence that all limbs of the legal test are satisfied; set out the procedural steps taken in the foreign Court, the orders handed down there and any subsequent steps taken by the plaintiff.

Whether or not the order is granted, is ultimately within the Court's discretion.

Whilst the procedure is well trodden ground in Jersey, the courts often cite a passage from *Holyoake and Another v Candy and Others* [2017] EWCA Civ 92] T at 40, that :

*'... it is necessary to maintain the close regulation of the availability of injunctions which have the nuclear effect of prohibiting the affected party from dealing with his assets.'*

## Use of disclosure obtained in Jersey, in support of foreign proceedings

The Jersey Court has recently taken a reasonably liberal approach to the use by parties of disclosure ordered in Jersey, in aid of foreign proceedings.

In *Emirates NBD Bank P.J.S.C v GlenQ Nominees Limited and Ors* [2026] JRC 038, the Jersey Court made disclosure orders in support of post-judgment enforcement of an award of the Dubai Court of Cassation. The issue that arose was whether the disclosure obtained, could be used in support of English bankruptcy proceedings for the purpose of establishing residency.

The facts were that Emirates Bank (the **Bank**) had the benefit of an order of the Dubai Court, which found a Qatari national, Mr Al Saad, liable to pay the equivalent of £14.5m pursuant to a guarantee.

The Bank sought, and was granted, certain disclosure orders in Jersey. The Bank had undertaken that, other than with leave of the Jersey Court, any information obtained would only be used for the purpose of identifying assets which could be the subject of freezing orders ; disclosure orders; and / or substantive claims brought by the Bank to enforce the Dubai judgment, in Jersey or elsewhere.

The Bank then received some 6,000 pages of disclosure in relation to a trust structure, the settlor of which was the debtor, Mr Al Saad.

The Bank applied to the Jersey Court for permission to use that disclosure in English bankruptcy proceedings, for the sole purpose of confirming Mr Al Saad's residency there, to assist in establishing the relevant jurisdiction.

The Jersey Court had no difficulty with the Bank's application. The entity holding the trust assets was entirely unsuccessful, in opposing it.

## Jersey trust structures

### Firewall provisions

It is often the case that an individual resident abroad over whom the Jersey courts do not have in personam jurisdiction, holds an interest in Jersey trust assets.

Article 9 of the Trusts Jersey Law 1984 (as amended) sets out powerful firewall provisions which have the effect that the Jersey trust remains valid whether or not any foreign law recognises the concept of a trust; or the trust or a transfer into trust avoids or defeats rights conferred by any foreign law in relation to matrimonial, or forced heirship law.

These firewall provisions also defend Jersey trusts by ensuring that, subject to the terms of the trust, which prevail, all questions in relation to the trust or any disposition of property to it, are determined in accordance with Jersey law, without reference to the law of any other jurisdiction.

Firewall provisions of this type are common across the offshore world.

What this means in the context of freezing injunctions, is that if the Jersey Court is presented with an application seeking the preservation of assets of a Jersey trust in support of foreign proceedings which, if successful, would offend Jersey law, then, subject to the terms of the trust itself, the application would fail.

## The unique customary law remedy of Pauline action

There remain strong remedies within Jersey's armoury to assist creditors, not least in the form of the Pauline action, which deserves brief mention.

The Pauline action is a customary law remedy by which a transfer undertaken in fraud of creditors may be set aside. It requires a plaintiff to prove that it was a creditor at the time of each transfer of assets, that the debtor was insolvent at the time of each transfer or rendered insolvent by it, and that the transfer was carried out with the substantial intention of defeating the creditor (see *Emirates NBD Bank PJSC v Almahawi and Others* [2024] JRC 256 – enforcement of orders of the Dubai Court).

Freezing orders can be granted to preserve assets pending the outcome of a Pauline action.

## Asset freezing conclusions

The Jersey Courts are used to dealing with applications for freezing orders and disclosure orders quickly and on an *ex parte* basis to ensure that effective remedies are available to preserve assets in Jersey where appropriate.

The Courts have repeatedly shown their commitment to international cooperation and also to ensuring that the reputation of Jersey as an international finance centre, is protected.

The Jersey Courts do so without compromising their own jurisdiction, in considering any worldwide freezing order granted by a foreign court, afresh. The Jersey Courts have also demonstrated that they will take care not to overreach their own jurisdiction, over foreign defendants.

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